

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT B. LEDBETTER,

Defendant.

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Case Nos. 2:14-cr-127, 2:15-cr-80

Civil Case Nos. 2:20-cv-5733, 2:21-cv-1120

Chief Judge Algenon L. Marbley

Magistrate Judge Michael R. Merz

ORDER

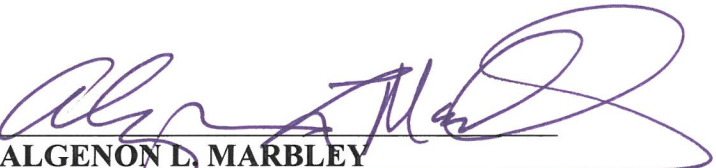
This proceeding under 28 U.S.C. § 2255, brought *pro se* by Petitioner Robert Ledbetter, is before the Court on the Report and Recommendations of United States Magistrate Judge Michael R. Merz which recommended dismissing the Motion to Vacate (ECF No. 1796). Defendant objected (ECF No. 1804) and the Court recommitted the case for reconsideration in light of the Objections. (ECF No. 1809). The Magistrate Judge then filed a Supplemental Report and Recommendations on the merits, combined with a Second Supplemental Report and Recommendations on Defendant's Motion to Vacate a number of interlocutory orders for lack of subject matter jurisdiction. ("Second Supp. R&R," ECF No. 1816).

The Second Supp. R&R was filed and served by mail on October 11, 2022. (*Id.*). Defendant was notified that any objections were required to be filed within fourteen days under Fed. R. Civ. P. 72(b) and he was allowed an additional three days under Fed. R. Civ. P. 6 because service was being made by mail. (*Id.* at 6). Therefore, Defendant's time to object expired October 28, 2022, but he has filed no objections.

In an Amendment (ECF No. 1822) to the Report and the Supplemental Report, the Magistrate Judge noted that the United States had agreed that Ledbetter's conviction on Count 31

was precluded by the decision of the United States Supreme Court in *United States v. Davis*, 139 S. Ct. 2319 (2019). The Magistrate Judge therefore amended the Report and the Supplemental Report to recommend that Ledbetter's conviction and sentence on Count 31 be vacated. (Amendment, ECF No. 1822). No objections have been filed to the Amendment, which is favorable to Ledbetter and adopts the position advocated by the United States.

Accordingly, the Supp. R&R as amended is **ADOPTED** and the Motions to Vacate (ECF No. 1681 in Case 2:14-cr-127 and ECF No. 98 in Case No. 2:15-cr-080) are **DISMISSED WITH PREJUDICE**. Because reasonable jurists would not disagree with this conclusion, Petitioner is denied a certificate of appealability, and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.



ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: November 14, 2022